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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

KENNETH RADOSEVICH et al.,

Plaintiffs and Respondents,

v.

MICHAEL A. ALLEN,

Defendant and Appellant.

B212592

(Los Angeles County
Super. Ct. No. BC165262)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Murray Gross, Commissioner. Affirmed.

Michael J. Buley for Plaintiffs and Respondents.

Thomas Swallow for Defendant and Appellant.

Michael Allen appeals from a final judgment entered on an order in favor of the respondents, Kenneth and Paula Radosevich for the sale of appellant's home in Malibu. This is the second appeal brought by appellant. The first appeal concerned respondents' first application for an order for sale of appellant's Malibu home. In that case (*California Coastal Commission v. Allen* (2008) 167 Cal.App.4th 322), Division Four of this court concluded, among other things, that appellant was not entitled to claim a homestead exemption in the property.

Respondents' filed another order for sale of appellant's home in March 2008, and appellant again attempted to claim the homestead exemption to prevent the sale of his property. The trial court rejected appellant's claim to the homestead exemption and granted the order for the sale of the Malibu property. Appellant appeals, asserting the trial court erred in holding that appellant was not entitled to a homestead exemption because (1) title for the property is owned by a corporation, and because (2) appellant did not continuously reside on the property in question. The appeal lacks merit. Division Four of this court previously decided both issues; therefore appellant is precluded from litigating the same issues again. Nonetheless, even if the issues were reconsidered the result would be the same—appellant cannot claim a homestead exemption in property owned by a corporation, and even if he could, appellant did not continuously reside on the property to even entitle himself to a homestead exemption. Accordingly, we affirm.

FACTUAL AND PROCEDURAL HISTORY

First Order for the Sale of Appellant's Property

Appellant owned a home in Malibu, the property subject of this dispute. In April 1999, the California Coastal Commission ("CCC") obtained a judgment against appellant, and in June of 1999 recorded an abstract of judgment in the amount of \$1.469 million.

On May 20, 1999, respondents obtained a judgment against appellant in the amount of \$67,903.77. On April 20, 2000, respondents recorded the abstract of judgment.

Respondents' judgment lien was junior to a judgment lien held by the CCC. Respondents negotiated and obtained from the CCC an assignment of the CCC's judgment. In December 2005, respondents obtained a writ of execution for the judgment and filed an application for an order for the sale of the property. Appellant opposed the order, challenging the validity of the assignment of the judgment. He claimed he was entitled to a homestead exemption for the Malibu property. The trial court granted the application and issued an order for the sale of the property on January 17, 2007. Appellant appealed.

Appeal Before the California Court of Appeal, Second District, Division Four

Appellant argued, among other things, (1) that he was entitled to claim a homestead exemption on the property even though he had transferred ownership of the property to a corporate entity,¹ and (2) that he satisfied the residency requirement for the exemption. Respondents asserted that appellant could not claim the exemption because a natural person did not own the property and because appellant did not reside at the property.

Division Four affirmed the decision of the lower court holding that appellant was not entitled to the protection of the homestead exemption because the property was not owned by a natural person, and appellant did not meet the continuous residence requirement for a homestead exemption. The court found the trial court had properly issued an order for sale of the property.²

¹ Appellant transferred all of his rights, title and interest in the Malibu property by grant deed to Trans America Property & Investment Inc., on July 3, 2003. In June 2008, title to the property was purportedly transferred back into appellant's name.

² In their brief, respondents note that they "continue to seek the foreclosure under the [CCC] judgment in light of [Division Four's] ruling that [appellant] had no

Second Order for the Sale of Appellant's property

Respondents filed another application for an order for the sale of the property on March 6, 2008. The lower court held that appellant was not entitled to a homestead exemption and appellant filed the current appeal.

DISCUSSION

I. Division Four's Opinion

Before this court, appellant asserts that the lower court improperly ordered the sale of his Malibu property. Specifically, he claims the court erred in finding he was not entitled to a homestead exemption. Respondents contend that appellant was not entitled to the exemption because a corporate entity owned the property when respondents sought the order for the sale of the property and because appellant could not show he resided there continuously. They also assert that these issues have already been decided by Division Four of this court and should not be revisited. We turn our attention first to the prior appeal in Division Four.

The California Court of Appeal, Second District, Division Four addressed the issues raised here in a previous case, and its judgment implicates the principle of collateral estoppel. (*California Coastal Commission v. Allen, supra*, 167 Cal.App.4th at p. 331.)³

Collateral estoppel is a part of the doctrine of res judicata. Res judicata in its narrowest application precludes parties or their privies from relitigating a cause of action that has been resolved in a previous proceeding. (*Vandenberg v. Superior Court* (1999) 21 Cal.4th 815, 828.) Res judicata in its broadest application under collateral estoppel

homestead exemption. Should that sale finally be completed before this Court rules on this appeal, it will render this appeal moot as [respondents'] lien will be foreclosed on as a lien which is junior to the [CCC] lien."

³ Respondents' brief does not use the terms "issue preclusion" or "collateral estoppel." Nevertheless, respondents allude to these concepts, arguing this court should affirm the judgment because Division Four of this Court previously resolved the same issues appellant asserts in the current appeal.

precludes the litigation in a subsequent suit of an issue conclusively decided in previous litigation against the parties or their privies. (*Ibid.*) In other words, when an issue is conclusively decided against a party or their privies, and the elements of collateral estoppel are met, those parties and privies cannot contest the issue again in a subsequent suit brought against them by different parties.

Collateral estoppel or issue preclusion “rests upon the sound policy of limiting by preventing a party who has had one fair adversary hearing on an issue from again drawing it into controversy and subjecting the other party to further expense in its reexamination.” (*Gonzales v. Toews* (2008) 111 Cal.App.4th 977, 982.) It is intended to “preserve the integrity of the judicial system, promote judicial economy, and protect litigants from harassment by vexatious litigation.” (*Vandenberg v. Superior Court*, *supra*, 21 Cal.4th at p. 829.)

The elements of collateral estoppel are “(1) the issue necessarily decided at the previous [proceeding] is identical to the one which is sought to be relitigated; (2) the previous [proceeding] resulted in a final judgment on the merits; and (3) the party against whom collateral estoppel is asserted was a party or in privity with a party at the prior proceed.” (*Daar & Newman v. VRL International* (2005) 129 Cal.App.4th 482, 489, citing *Risam v. County of Los Angeles* (2002) 99 Cal.App.4th 412, 420.) In this matter all of the elements of collateral estoppel are satisfied.

First, the issues appellant raises on appeal are identical to those decided by Division Four of this court. In this appeal, appellant asks this court to determine whether the fact that a corporation owns title to a property prevents the judgment debtor from claiming a homestead exemption in that property. This exact issue was decided by Division Four of this court. Division Four examined the legislative comment to the amended portion of Code of Civil Procedure section 704.740 that states “[s]ubdivision (a) of Section 704.740 is amended to make clear that the requirements of this article do not apply to the sale of an interest in a dwelling owned by a corporation or other artificial person.” (Legis. Comm. com., 17 West’s Ann. Code of Civ. Proc. (1987 ed.) foll. §

704.740, p. 351.) The court held that when appellant transferred the property from himself to a corporation, a natural person no longer owned the property therefore appellant was not entitled to a homestead exemption. (*California Coastal Commission v. Allen, supra*, 167 Cal.App.4th at p. 329.)

Appellant also asks this court to revisit the issue of whether he met the requirements of the automatic homestead exemption, specifically the requirement that the judgment debtor reside continuously in the dwelling until the date of the court determination that the dwelling is a homestead. (Code Civ. Proc., § 704.710.) Division Four decided this issue as well, finding appellant was not temporarily absent from the property but resided in Australia for six months while starting a new business there, and therefore appellant did not meet the continuous residence requirement of the homestead exemption. (*California Coastal Commission v. Allen, supra*, 167 Cal.App.4th at pp. 330-331.) Both issues are identical to those issues decided by Division Four, and thus the first element of collateral estoppel is met.

The second element of collateral estoppel is also satisfied. A judgment of an appellate court is final and has the effect of res judicata as to the matters actually determined by it. (*Grable v. Grable* (1960) 180 Cal.App.2d 353, 359-360.) The decision of Division Four was final and on the merits.⁴

Finally, it appears that this case involves the same parties as the appeal in Division Four. Prior decisions have collateral estoppel effect on the same parties or their privies. (Code Civ. Proc., § 1908.) Parties are deemed, “to be the same when those between whom the evidence is offered were on opposite sides in the former case, and a judgment or other determination could in that case have been made between them alone, though other parties were joined with both or either.” (Code Civ. Proc., § 1910.) Although “one who was neither a party nor in privity with a party to a previous action may assert the

⁴ Appellant’s petition to the Supreme Court of California in the previous proceeding was denied therefore the appellate decision was final.

plea of collateral estoppel against a party or one in privity with a party to the prior adjudication [citation], the party *against whom* the plea of collateral estoppels or res judicata is asserted *must* have been a party or otherwise privy to the prior action.” (*F.W. Woolworth Co. v. Franchise Tax Bd.* (1984) 160 Cal. App. 3d 1154, 1160; italics in original.)

Appellant and respondents were parties in the previous action, and the material issues in this case were decided against appellant in the prior case. The elements of collateral estoppel are satisfied. Appellant is precluded from litigating the matters already decided by Division Four.

II. Homestead Exemption

Even if collateral estoppel did not apply, we would affirm because appellant has not shown that he is entitled to a homestead exemption.

On appeal appellant argues he is entitled to a homestead exemption because although a corporation owned his house, he resided in the home and was thus entitled to claim a homestead exemption. His argument lacks merit.

Homestead laws were enacted to protect against the forced sale of a certain portion of the homestead owned by individuals or families. While the homestead right is recognized in the California Constitution, the limitations and requirements for the homestead exemption are set forth in statute. (See *Noble v. Hook* (1864) 24 Cal. 638, 639-640.) The first statutes relating to the homestead exemption were enacted in 1851, and 1860 legislation was enacted to require the filing of a written declaration to create a homestead in order for the exemption to apply. (37 Ca. Jur., *Homesteads*, § 8.) However because many debtors failed to execute written declarations to create homesteads and take advantage of the exemption, the homestead statutes were amended. In the 1970s, legislation was enacted to confer an automatic homestead exemption. (*Webb v. Trippet* (1991) 235 Cal.App.3d 647, 650.)

The homestead statute holds that the “interest of a natural person in a dwelling may not be sold under this division to enforce a money judgment except pursuant to a

court order for sale obtained under this article and the dwelling exemption shall be determined under this article.” (Code Civ. Proc., § 704.740.) The Legislative Comments to Code of Civil Procedure section 704.740 indicates that “section 704.740 is amended to make clear that the requirements of this article do not apply to the sale of an interest in a dwelling owned by a corporation or other artificial person.” (Legis. Com. com., 17 West’s Ann. Code Civ. Proc. (1987 ed.) foll. § 704.740, p. 351.) Accordingly, the Malibu property cannot be the subject a homestead exemption because a corporation, rather than natural person, owned it.

Fisch, Spiegler, Ginsburg & Ladner v. Appel is illustrative. There the court held that debtors could claim a homestead exemption in their residence, even though title to the residence was held in a revocable trust. (*Fisch, Spiegler, Ginsburg & Ladner v. Appel* (1992) 10 Cal.App.4th 1810, 1813.) However, *Appel* is distinguishable from the present case. In *Appel*, the court emphasized that the trust was revocable and that the power of revocation was held by the debtors, and as such gave the debtors a contingent reversionary interest in the residence at issue. (*Ibid.*) The contingent reversionary interest gave the debtors an interest in real property which made them eligible to claim a homestead in the property. (*Ibid.*) Such is not the case here. Appellant has no interest in the property; all ownership to the property has been transferred to the corporation. Therefore, appellant is not entitled to a homestead exemption on the property.

In any event, appellant does not qualify for homestead exemption because he did not continuously reside on the property. In order for a judgment debtor to receive the benefit of a homestead exemption for his or her principal dwelling, the judgment debtor or judgment debtor’s spouse must reside on the property from the date the judgment creditor’s lien attached to the dwelling. (Code Civ. Proc., § 704.710.) The judgment debtor or the judgment debtor’s spouse must also continuously reside on the property from the date the lien attached to the date of the court’s determination that the dwelling is a homestead. (*Ibid.*)

The homestead statute, Code of Civil Procedure section 704.710 was amended in 1983 to take out the term “actually” next to the term “resides,” which meant that an individual could at some point have been temporarily absent from the dwelling (for example, on vacation), and still claim a homestead exemption. (Cal. Law Revision Com. com., 17 West’s Ann. Code Civ. Proc. (1987 ed.) foll. § 704.710, p. 346.) Courts have found a homestead exemption when owners were temporarily absent from their homes but still returned to their homes after short intervals. In *In re Dodge*, the debtor rented an apartment away from her residence for employment purposes. (*In re Dodge* (1992) 138 B.R. 602, 605.) Where the debtor lived in the apartment four days a week and returned to her residence on the weekends, the court found such constituted a “temporary absence.” (*Id.* at p. 607.) In *In re Anderson*, the debtors leased out their home, and purchased and moved into a second home for the purposes of attending college. (*In re Anderson* (1987) 824 F.2d 754, 755.) The court held that such did not constitute a “temporary absence.” (*Id.* at p. 757.)

Appellant’s actions do not constitute a temporary absence. Appellant rented out his residence and left the country for Australia. Appellant stayed in Australia for six months in order to start a new business. (*California Coastal Commission v. Allen, supra*, 167 Cal.App.4th at p. 330.) Unlike in *In re Dodge*, appellant did not return to his residence at all during the six months. Similar to *In re Anderson*, where the debtors leased their first home and moved into a second home for the purpose of getting a college education, here appellant leased out his residence to engage a similar long-term commitment that had the potential to last longer than six months. Therefore, appellant does not meet the continuous residence requirement to entitle him to a homestead exemption.

Thus, the lower court properly concluded he was not entitled to the homestead exemption.

DISPOSITION

The judgment is affirmed. Respondents are entitled to their costs on appeal.

WOODS, J.

We concur:

PERLUSS, P. J.

ZELON, J.